

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA

*Plaintiff,*

Vs.

**Civil No. 11-1072 WDS/KBM**

2011 GMC DENALI  
VIN:1GKS2EEF3BR177397

2004 NISSAN ARMADA  
VIN:5N1AA08A84N740012

*Defendants,*

*and*

ISABEL C. GUTIERREZ  
JP MORGAN CHASE BANK NA, AND  
BANK OF THE WEST,

*Claimants.*

To: STEPHEN R. KOTZ  
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**RESPONSE AND PLEADINGS TO FORFEITURE *IN REM***

Claimant states:

**JURISDICTION AND VENUE**

1. The civil action *in rem* for the return of seized Defendant Vehicles is subject to jurisdiction of this Court in the District of New Mexico.
2. The United States District Court for the District of New Mexico has jurisdiction.

3. Proper Venue in Albuquerque, New Mexico.
4. The stated “res” or Defendant Property subject to this action is stated here as
  - (a). a 2011 GMC MPV VIN:1GKS2EEF3BR177397, and
  - (b) a 2004 Nissan VIN:5N1AA08A84N740012(hereafter referred as “Defendant Vehicles”).

#### **PARTIES AND CLAIMANTS**

5.
  - (a) Isabel C. Gutierrez at P.O. Box 708, Columbus N.M. 88029 and/or 201 S. Taft St., Columbus, N.M. 88029;
  - (b) JP Morgan Chase Bank NA at P.O. Box 901098, Forth Worth, TX 76101;
  - (c) Bank of the West at P.O. Box 8160, Walnut Creek, CA 94597 and whose lien on the 2004 Nissan has been already paid by Claimant Isabel C. Gutierrez.

#### **STATEMENT OF FACTS**

6. Information and facts in this indictment USDC D.N.M. Criminal No. 11CR487 RB are not disputed but highly relevant to this response for forfeiture of Defendant Vehicles. The Defendant Vehicle 2004 Nissan Armada was mentioned directly as being involved in an incident in this indictment. The outcome of such incident, on February 20, 2010, and prior to execution of indictment had not warranted an arrest or directed towards subsequent legal action by law enforcement, that would suggest illegal activity, real or perceived, involved in this incident. In spite of various other incidents mentioned in the indictment involving the said Defendant Vehicles, defendants, and various law enforcement agencies in their respective time frames,

these did not lead to any subsequent legal actions warranted by illegal activity, or grounds of suspicion to perceived illegal activity for Claimant Isabel Gutierrez.

7. Information regarding arrests of defendants March 10, 2011 in Columbus New Mexico is not disputed. Agents for Homeland Security Investigations (HSI), Customs and Border Protection (CBP) Air and Marine, Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE), Drug Enforcement Administration (DEA), and New Mexico State Police (NMSP) as a result of aforementioned indictment did arrest various persons in Columbus New Mexico. Blas Gutierrez, son of claimant Isabel Gutierrez, was party to the arrests. Blas Gutierrez and his family had resided at 201 S. Taft Street in Columbus, New Mexico, in Claimant Isabel Gutierrez's house until August of **2010**.

8. During execution of federal search warrants Defendant Vehicle 2011 GMC was seized at Blas Gutierrez's family residence at 400 N. Iowa Street in Columbus, New Mexico in March 10, **2011**. Defendant Vehicle 2004 Nissan was seized at an unknown location under conditions unknown to claimant Isabel Gutierrez.

9. Information regarding Blas Gutierrez's change of plea to guilty is not disputed.

10. Claimant Isabel Gutierrez's does not dispute the use of Defendant Vehicles by son Blas Gutierrez who had unlimited familial rights to use same Defendant Vehicles. Claimant Isabel Gutierrez had reciprocal right to use Blas Gutierrez's vehicles. Blas Gutierrez and his family lived with claimant Isabel Gutierrez and her husband at claimant's Isabel Gutierrez's house located at 201 S. Taft St. in Columbus. Blas Gutierrez had been working at San Jose Fina station until about July of 2011 and drove primarily the 2004 Nissan Defendant Vehicle, legally titled in New Mexico since 2004 to claimant Isabel Gutierrez. Claimant Isabel Gutierrez used primarily a 1999 Dodge truck owned and legally titled in New Mexico to Blas Gutierrez for

practical purposes and use at her grocery store business. Claimant Isabel Gutierrez acquired Defendant Vehicle 2011 GMC in mid-January 2011. Defendant Vehicle 2011 GMC use was shared by Gabriela Gutierrez, Blas Gutierrez's wife, and Claimant Isabel Gutierrez until its seizure a month and a half later in March 10, 2011. Alleged use by Blas Gutierrez of 2011 GMC was very minimal. Claimant Isabel Gutierrez restates use of Defendant Vehicles by her son is normal and allowed occurrence, and that she was totally unaware of any purported wrongdoing use, illegal use, or concealed use, actual, attempted, or perceived. Claimant Isabel Gutierrez is aware that after execution of federal search warrants, Defendant Vehicle 2007 Ford F-150, a Village of Columbus vehicle, used by then trustee Blas Gutierrez was seized in Columbus New Mexico on March 10, 2011, and has since been returned to the Village, its rightful owner. Claimant Isabel Gutierrez points out that another vehicle of very similar physical characteristics to GMC Denali Defendant Vehicle and also belonging to the Village of Columbus, a GM Tahoe, was frequently used by then trustee and son Blas Gutierrez before March 10, 2011 and was most likely mistaken for Defendant Vehicle GMC Denali that is owned by Claimant Isabel Gutierrez during this brief 45 day tenure.

11. Claimant Isabel Gutierrez states that Defendant 2004 Nissan Vehicle was used by son Blas Gutierrez and wife along with Claimant Isabel Gutierrez and immediate family since its original purchase date in 2004 for ordinary, daily use. GMC Denali Defendant vehicle had been purchased in late January 2011 so the use by Blas Gutierrez was very minimal.

12. Claimant affirms that details of a U.S. Border Patrol stop incident of Defendant 2004 Nissan of January 14, 2010 were unknown to her. This incident did not net arrests, vehicle or other seizure, or any subsequent legal action that would have been reasonably expected and executed by law enforcement agencies had something illegal been done or determined to have

been done by Defendant Vehicle Nissan and/or persons involved. Claimant Isabel Gutierrez's states that as a result of the same Border Patrol stop incident, unbeknownst law enforcement agency(ies) and unbeknownst to claimant Isabel Gutierrez at the time, did search the 2004 Nissan Defendant Vehicle again including the claimant Isabel Gutierrez's house where Blas Gutierrez was residing. Consent of search was freely provided by Blas Gutierrez, in absence of legal search warrant. The consequences of these or other actions or inquiries by this or other law enforcement agencies, did not net arrest or seizure; did not find grounds for illegal activity; did not present evidence of wrongdoing to direct claimant Isabel Gutierrez to believe or even fundamentally suspect there was any acts or wrongdoing by her son Blas Gutierrez or anybody and involving Claimant Isabel Gutierrez's Defendant Vehicles.

13. Claimant Isabel Gutierrez is mother of Blas Gutierrez.

14. Claimant Isabel Gutierrez vehemently denies co-conspirator's allegation statements as to her knowledge of son's Blas Gutierrez purported illegal use. Claimant Isabel Gutierrez states that there was no reason to discontinue use of Defendant Vehicles in this entrenched family practice as son Blas Gutierrez affirmed not being involved in any wrongdoing after the incidents described. Claimant Isabel Gutierrez had no motive to disbelieve son Blas Gutierrez's statements. At the time, no legal action was taken by the law enforcement agencies involved, nor was Claimant Isabel Gutierrez forewarned, in a direct or an informational manner, to lead her to believe or suspect son Blas Gutierrez was liable for any kind of illegal use. Claimant Isabel Gutierrez has no knowledge, perceived or actual, of any improper use of Defendant Vehicles and avows an Affirmative Defense as an Innocent Owner of such.

15. JP MORGAN CHASE BANK NA, a financial institution, has a primary lien of interest in 2011 GMC Defendant Vehicle. Defendant Vehicle was acquired by Claimant Isabel

Gutierrez in late January of 2011 and seized March 10, 2011, with Claimant Gutierrez still owing JP Morgan approximately 80% of the value of the vehicle.

16. BANK OF THE WEST, originator auto loan contractor had lien to title of 2004 Nissan Defendant Vehicle but since then Claimant Isabel Gutierrez has completed terms and release of such lien; rightful Ownership is Claimant Isabel Gutierrez.

#### **CLAIMS FOR RELIEF**

17. Claimant Isabel Gutierrez prays for just relief from such Complaint for Forfeiture *IN REM* or respectfully requests full trial by jury in this case.

18. Claimant Isabel Gutierrez respectfully requests Defendant Vehicles from release of seizure until this case is adjudicated and further states an undue hardship has been imposed upon her as a result of this Complaint. Claimant Isabel Gutierrez has limited means to alternate and reliable transportation. Claimant Isabel Gutierrez is rightful owner of Defendant Vehicles and should be afforded at minimal their use as since the only other means for transportation are a 1998 car and a 1999 truck, both having in excess of 150,000 miles and their overall reliability is questionable. Claimant Isabel Gutierrez is entrusted to the care of 3 immediate family school-aged children, in addition to her daughter-in-law now residing at her house and requiring reliable and safer Defendant Vehicles for everyday use. Claimant Isabel Gutierrez also requests for Defendant Vehicles to be available in a fully functional state as when seized.

19. Proper Venue in Albuquerque, New Mexico creates a financial and preventable hardship for the claimant Isabel Gutierrez who therefore respectfully requests this Court for a Change of Venue to Las Cruces, New Mexico.

20. Claimant Isabel Gutierrez respectfully pleads the Court for immediate, unconditional release of Defendant Vehicles to claimant Isabel Gutierrez for her unhindered, legal possession of such.

21. Claimant Isabel Gutierrez will pursue financial obligations and/or negotiations with Claimant JP MORGAN CHASE BANK NA loan contract involving 2011 GMC Defendant Vehicle.

22. Claimant Isabel Gutierrez pleads to the Court the legal participation of husband Roberto R. Gutierrez in pro se defense of this Civil Case No. 11-1072 WDS/KBM. Claimant Isabel Gutierrez has no present financial resources for payment of attorney legal fees and husband Roberto Gutierrez has tacit claim to Defendant Vehicles.

23. Claimant Isabel Gutierrez seeks unconditional return of seized Defendant Vehicles due to inappropriateness of plaintiff's requests. Plaintiff has returned to its original owner (Village of Columbus) a forfeited Defendant Vehicle (2007 Ford Truck) seized in USDC D.N.M. Criminal No. 11CR487 RB under exact same circumstances as the presently claimed Defendant Vehicles.

**WHEREFORE,** Claimant Isabel Gutierrez prays for just relief from complaint of forfeiture *in rem* of Defendant Vehicles or trial by jury; immediate release of seizure of Defendant Vehicles to Claimant Isabel Gutierrez; requests for a change of venue of case from Albuquerque to Las Cruces New Mexico; pleas the Court for unconditional unhindered release of Defendant Vehicles to her rightful ownership to facilitate negotiations with other claimant(s); pleads to include husband Roberto Gutierrez as pro se defense partner in case until resolution; further prays for warranted return of Defendant Vehicles by an equal application of justice;

and seeks costs and expenses incurred in these proceedings, and other proper relief.

Respectfully submitted,

ISABEL C. GUTIERREZ, Claimant  
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